

CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

METROPOLITAN AREA PLANNING COUNCIL

AND

PASSPORT LABS, INC.

This AGREEMENT, dated 3/30/2021, is made and entered into by and between the Metropolitan Area Planning Council [**"MAPC"**], a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office located at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Massachusetts Bay Transportation Authority [**"MBTA"**], the City of Gardner and the following regional planning agencies, on behalf of 329 municipalities that they represent: Berkshire Regional Planning Commission, Cape Cod Commission, Central Massachusetts Regional Planning Commission, Franklin Regional Council of Governments, Martha's Vineyard Commission, Merrimack Valley Planning Commission, Nantucket Planning and Economic Development Commission, Northern Middlesex Council of Governments, Old Colony Planning Council, Pioneer Valley Planning commission, Southeastern Regional Planning and Economic Development District (to be referred to hereafter as the **"Buyer"** in their individual legal capacity). Such collective purchasing has been accomplished pursuant to M.G.L. c. Chapter 7, Section 22B of the Massachusetts General Laws and without liability to **MAPC**, and **PASSPORT LABS, INC.** [**"Vendor"**], with its principal office located at 128 S. Tryon St., Suite 2200, Charlotte, NC 28202.

RECITALS

WHEREAS, **MAPC** has, on behalf of the above named **Buyer**, has conducted a procurement to enable **BUYER** to purchase Parking Payment Systems (RFP # MAPC 2021 Mobile Parking Payment Systems, hereinafter (**"RFP"**)); which procurement was conducted pursuant to M.G.L. c. 30B; and,

WHEREAS, **Vendor** proposal has been evaluated and selected by the **MAPC** Evaluation Team to provide Parking Payment Systems to any of the above listed **Buyers** ; and,

NOW THEREFORE, in consideration the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

TERMS AND CONDITIONS

Article I

General Description of the Work

1. Pursuant to the Terms and Conditions of this AGREEMENT, the Request for Proposals [**"RFP"**] – **RFP # MAPC 2021 Mobile Parking Payment Systems** attached in Exhibit B; and the **Vendor's** Price Proposal and Technical Proposal attached in Exhibit C, **MAPC** hereby authorizes **Buyer** to engage the **Vendor** to provide Parking Payment Systems to the **Buyer**.

Services of the Vendor

2. The **Vendor** will provide the goods and/or services as described in the **RFP** and its response thereto and **Vendor** will, if required by the **Buyer**, negotiate a SOW.
3. The **Vendor** shall report, and be responsible to **MAPC** or its designee to comply with all requirements set forth in The Contract Administration Fee which has been included herein as Exhibit D.
4. There shall be no amendment to this AGREEMENT without the written approval of **MAPC**. **MAPC** shall be under no obligation to pay for any goods provided or services performed by the **Vendor**.
5. The **Vendor** represents and warrants to **MAPC** as follows:
 - i. That it and all its personnel (whether employees, agents or independent **Vendors**) are qualified and duly licensed as required by Massachusetts state law and/or local municipal code to provide services and/or goods required by this AGREEMENT.
 - ii. That it further agrees to perform services, including any manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
 - iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.
 - iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

Article III

Performance of the Vendor

6. In the performance of services under this AGREEMENT, the **Vendor** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **Vendor** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent **Vendor** relationship.
7. The **Vendor** agrees to be responsible for and warrantee the work of its subcontractors listed in Exhibit E and to ensure their compliance with all legal, quality and performance requirements of the Request for Proposals [**RFP**] – RFP No. attached in Exhibit B; and the **Vendor**'s Price Proposal and Technical Proposal attached in Exhibit C, The **Vendor** agrees that it may not use subcontractors not named in Exhibit E without the prior written consent of the **BUYER**, which consent will not unreasonably be withheld.
8. **Vendor** agrees that it will meet with **MAPC** quarterly (or a lesser period of time as determined by **MAPC**) to discuss the status of any implementation and review any concerns. Such meeting can be either in person at the **MAPC** office, or it may be conducted remotely. **Vendor** shall prepare a written status report and send such written report to **MAPC** FOUR (4) business days in advance of the meeting.

Article IV

Time of Performance and Liquidated Damages

9. Time shall be of the essence in relation to **Vendor's** performance under this AGREEMENT. **Vendor** shall complete performance as promised in its quote that accompanies **Buyer's** purchase order or other document confirming its authorization to the **Vendor** to proceed. Reasonable extensions shall be granted by the **Buyer** at the written request of the **Vendor**, provided the justifying circumstances are documented by and are beyond the reasonable control of **Vendor** and without fault of **Vendor**. In the event of such an extension, all other Terms and Conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.
10. **MAPC** and **Vendor** agree that the economic damage suffered by Buyer as a result of delay in the successful implementation of **Buyer's** Parking Payment System is not readily ascertainable. Where delay is solely attributable to **Vendor**, **Buyer** may elect to impose liquidated damages as set forth herein. Liquidated damages shall be due to **Buyer** in the amount of 0.1% (one-tenth of one percent) of the face value of the **Vendor's** quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **Vendor's** final invoice or taken by **Buyer** as a deduction to such final invoice. In the event that **Vendor's**, final implementation of its system fails to perform in accordance with the RFP and **Vendor's** proposal, **Buyer** shall, in writing, advise **Vendor** of such failure to comply. **Vendor** shall be given a TWO (2) week period to cure such failure. If **Vendor** has not been able to cure such failure within TWO (2) weeks post written notice, **Buyer** may invoke liquidated damages, which shall include the assessment calculated above, as well as to require **Vendor** to assume fiscal responsibility to recompense **BUYER** for the cost of cover to engage a subsequent **Vendor** to implement a Parking Payment System.
11. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either **Buyer** or **Vendor** through the American Arbitration Association within 10 (ten) business days of written notice given by the party declaring impasse. **Vendor** and **Buyer** agree to fully comply with the arbitrator's decision within a reasonable time.

Article V

Revisions in the Work to Be Performed

12. If during the **Vendor's** Time of Performance, **Buyer** requires revisions or other changes to be made in the scope or character of the work to be performed, **Buyer** will promptly notify **Vendor** in writing. For any changes to the, **Vendor** shall provide **Buyer** with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of **Buyer**, which shall be construed as a modification to **Buyer's** original purchase order.
13. **Buyer** will neither unreasonably request revisions nor will it unreasonably withhold final acceptance of delivered products.

Article VI

Term of AGREEMENT

14. The term of this AGREEMENT shall commence upon execution by **MAPC**, and it will continue until December 31, 2021, or until otherwise terminated as provided by this AGREEMENT or the **RFP**.
15. **MAPC** reserves the right at its sole discretion to extend the contract for up to two (2) additional one-year terms ending December 31st, 2022 and December 31st, 2023 respectively.
16. In the event new contracts have not been procured and awarded before the end of a second contract extension, **MAPC** reserves the right at its sole discretion to extend the contract for an additional period of time until new contracts have been procured and awarded. However, in no instance shall any contract term, including extensions, exceed three (3) years in total.
17. The **Vendor** agrees to perform promptly upon execution of this AGREEMENT and will diligently and faithfully perform in accordance with the provisions hereof.
18. All Terms and Conditions of: This AGREEMENT and any amendments thereof; the RFP; Vendor's proposal and any amendments thereof, shall remain in full force and effect during the entire Term of this AGREEMENT. Notwithstanding this provision, **Vendor** may, after the SECOND year of the Term, request that **MAPC** negotiate a reasonable cost escalation, which price cannot exceed 5% of the cost at the time of the request. **Vendor** shall make such request in writing and demonstrate the basis for such price increase. **MAPC** will in good faith negotiate such price increase request. However, **MAPC** will not guarantee the requested price increase will be accepted.

Article VII

Orders, Fees, Invoices, and Payments

19. Orders, fees, invoices, and payment shall be processed and paid as specified in Section 10-Terms & Conditions of the **RFP**.

Article VIII

Assignment

20. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

Article IX

Indemnification

21. **Vendor** agrees to indemnify and save **MAPC, Greater Boston Police Council ("GBPC")**, The

Commonwealth of Massachusetts and **Buyer** harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by **Vendor** (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of **Vendor**. **Vendor** shall reimburse **MAPC, GBPC, and Buyer** for any and all costs, damages, and expenses including reasonable attorney's fees which **MAPC, GBPC, and Buyer** pays, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of **MAPC, GBPC, The Commonwealth of Massachusetts and Buyer** expressed or not expressed in the **RFP** and with respect to this AGREEMENT.

Article X

Insurance

22. Before performing under this AGREEMENT, the **Vendor** shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the **RFP** and provide written documentation of such in the form specified in the **RFP**.
23. The **Vendor** shall give **MAPC** 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

Article XI

Termination of Agreement

24. Either **MAPC** or the **Vendor** may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and satisfactory manner.
25. **MAPC** shall have the right to terminate this AGREEMENT for its convenience upon fourteen (14) calendar days of written notice.
26. **MAPC** shall have the right to terminate this AGREEMENT immediately in the event that **MAPC**, in its exclusive right determines that there has been a breach of security with regards to Personally Identifiable Information or Credit Card Data. **MAPC** shall bear no liability to **Vendor** if it is ultimately determined that no breach occurred.
27. Following termination of this AGREEMENT, the parties shall be relieved of all further obligations hereunder except that:
28. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **Vendor** in the event of any termination.
29. The **Vendor** shall remain liable for any damages, expenses or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

Article XII

Negotiation in the Event of Disputes

30. In the event of an unresolved dispute between **Buyer** and **Vendor**, **Buyer** reserves the right to submit a written request to **MAPC** to work with the parties to resolve the dispute. Pursuant to this AGREEMENT, **Vendor** is required to participate in good faith in such dispute resolution. **Buyer** and **Vendor** would submit its positions in writing to **MAPC**. **MAPC** shall apply best efforts to resolve disputes in a fair and reasonable manner. Such efforts shall include remote or in person meeting with either or both of the parties. Participation in dispute resolution does not obviate the parties' ability to seek any legal remedies after **MAPC** has been given TWO (2) weeks to attempt to facilitate issue resolution. Such resolution must be mutually agreed to in writing by the parties. **MAPC** will not be a party to any resolution nor will it become liable for any issue resolution between the parties.

Article XIII

Entirety of Agreement

31. This AGREEMENT, together with its Exhibits, the **RFP** referenced above and its Addenda, the required supplemental documents and any additional exhibits, constitute the entire AGREEMENT between **MAPC** and the **Vendor** with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, email, fax or courier to the persons designated in Exhibit A.

32. The provisions of the **RFP** and the **Vendor's** Proposal are incorporated herein by reference. In the event of any conflict among the Contract Documents, the documents shall be construed according to the following priorities:

Highest Priority:	Amendments to Contract (if any)
Second Priority:	Contract
Third Priority:	Addenda to the RFP (if any)
Fourth Priority:	RFP
Fifth Priority:	Vendor's Proposal

Article XIV

Severability

33. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

Article XV

Governing Law and Jurisdiction

34. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. **MAPC**, **Vendor**, and **Buyer** agree to submit their

respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

Article XVI

Notice

35. Except as otherwise expressly provided in this AGREEMENT, any decision or action by **MAPC** relating to this AGREEMENT, its operation, or termination, shall be made only by **MAPC** or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For **MAPC** and any Buyer identified herein:

DocuSigned by:
Marc Draisen
X FF49EB7E2FE4401

3/30/2021

Signature
Marc D. Draisen

Date

Name
Executive Director

Title

For the **VENDOR**:
DocuSigned by:
[Signature]
X 8DB491EB9AD042A...

3/3/2021

* Signature
CRO

* Date

* Title
Khristian Gutierrez

* Name

EXHIBIT A

Notice Addressees

For **MAPC**:

Marc Draisen

Name

Executive Director

Title

MAPC

Organization

60 Temple Place

Street Address

Boston, MA 02111

City, State, ZIP

617.933.0700

Phone

617.482.7185

Fax

mdraisen@mapc.org

email

For the **VENDOR**:

Khristian Gutierrez

* Name

CRO

* Title

Passport Labs, Inc.

Organization

128 S Tryon St., Suite 2200

* Street Address

Charlotte, NC 28202

* Street Address

(704) 837-8066

* Phone

(888) 804-1783

* Fax

khristian@passportinc.com

* email

EXHIBIT B

Request for Proposal #MAPC 2021 Mobile Parking Payment Systems

EXHIBIT C

Special Terms & Conditions

1. **Vendor** attests to and warrants any and all representations made in **Vendor's** Complete Price and Complete Non-Price Proposals including, but not limited to, any and all representations and warranties made by it that exceed those of the manufacturers of products and assemblies used in its manufacture of subject apparatus and fitments.
2. **Vendor** shall indemnify **Buyer** for any and all loss of value of manufacturers' warranties incurred prior to **Vendor's** complete performance with regard to each individual **Buyer**.

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EXHIBIT D

Subcontractors

1.

EXHIBIT E

Other Documents:

1. Insurance Guarantee(s)__(to be provided for Contract execution)

EXHIBIT F

Vendor Proposal:

1. **Vendor's** Complete Technical Proposal
2. **Vendor's** Complete Price Proposal

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